IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15330 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SANJAY GAS AGENCY

Versus

TARUN MANSUKHLAL JOSHI

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Appearance:

1. Special Civil Application No. 15330 of 2003

MR YN RAVANI for Petitioner No. 1

MR ANSHIN H DESAI for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 12/08/2004

ORAL JUDGEMENT

1. Rule. Mr.A.H.Desai, learned advocate waives service of notice of rule, for the respondent.

2. At the joint request of the learned advocates appearing for both the parties, this petition is taken up for final disposal, today.

3. In the present petition, the petitioner has challenged the legality and validity of the award dated 07.08.2003 passed by the Presiding Officer, Labour Court No.1, Junagadh in Reference (LCJ) No.4 of 1992, by which the reference raised by the respondent - workman, came to be allowed partially. The termination of the respondent workman was set aside, he was directed to be reinstated in service and was also held to be entitled to 50% of the back wages for intervening period from the date of termination till reinstatement.

4. It was the case of the respondent - workman that while, he was working as booking clerk with the petitioner, his service was terminated with effect from 11.07.1991. It was the case of the respondent - workman that before terminating his service, though the respondent - workman worked for 240 days, no procedure under Section 25-F of the Industrial Disputes Act was followed by the employer. The petitioner had contended before the Labour Court that the service of the respondent workman was not terminated, but that the respondent - workman had abandoned the service on his own.

5. The Labour Court, after considering the evidence on record, has come to the conclusion that the contention of the petitioner that the respondent - workman had abandoned the service, is not proved and in fact, the petitioner had terminated the respondent - workman from his service. The Labour Court has also come to the conclusion that though the respondent - workman had worked for more than 240 days, during the relevant period i.e. 12 Calendar months before the termination, his services was terminated without following the provisions of Section 25-F of the Industrial Disputes Act.

6. The Labour Court has, therefore, found that the respondent - workman is required to be reinstated in service. With respect to the intervening period, the Labour Court has come to the conclusion that the respondent - workman would be entitled to 50% back wages.

7. Having considered the material on record and submissions of the learned advocates appearing for the parties, I find that the finding of facts arrived at by the Labour Court are supported by the evidence on record and no perversity can be found in the factual finding arrived at by the Labour Court. I, therefore, do not find, the present case is fit to interfere in so far as, the Labour Court found that the termination of the

respondent workman is required to be set aside.

8. The question of back wages is on a different footing, as rightly contended by the learned advocate for the petitioner. There was positive evidence on record in the form of deposition of one Shri Jaykant Valjibhai Rathod and certificate issued by Austin Engineering Company Limited to establish of the respondent was gainfully employed since January, 1995 and, thereafter. It is pertinent to note that the certificate of the said Company, which is at Ex.31 before the Labour Court, was given on 10th October, 2002 in which, it is clearly stated that the respondent - workman is working with the said Company since January, 1995 as permanent employee in the Production Department. Considering the fact that the termination was affected in July, 1991 and the fact that the respondent - workman was gainfully employed with effect from January, 1995, I find that the Labour Court gravely erred in law in awarding 50% back wages to the respondent - workman. It can be seen that the respondent - workman was gainfully employed in the substantial period between his termination from the date of award and the direction of payment of 50% of the back wages cannot be justified on any ground. I find that in the facts and circumstances of the case, it would be in the interest of justice, to direct that the respondent - workman would be entitled to 25% of the back wages instead of 50% of the back wages, as directed by the Labour Court in its impugned award.

9. In the result, the petition succeeds partially, the impugned award of the Labour Court is modified only to the extent of reducing the entitlement of the respondent - workman towards the back wages and providing that the respondent - workman will be entitled to 25% of the back wages instead of 50% of the back wages. The award of the back wages shall stand altered and modified accordingly.

10. In view of the aforesaid directions, this petition stands disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

[Akil Kureshi,J.]
(vijay)